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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

CISCO SYSTEMS, INC., a California
Corporation, CISCO TECHNOLOGY, INC., a
California Corporation,

Plaintiffs,

v.

PLANTRONICS, INC., a Delaware
Corporation, WILSON CHUNG, JAMES HE,
JEDD WILLIAMS, AND THOMAS
PUORRO individuals,

Defendants.

Case No.: 3:19-cv-07562-PJH

**DEFENDANT JAMES HE'S ANSWER TO
SECOND AMENDED COMPLAINT;
COUNTERCLAIMS; DEMAND FOR JURY
TRIAL**

ANSWER

COMES NOW Defendant James He ("HE") and in answer to the Second Amended Complaint ("SAC"), admits, denies, and alleges as follows:

James He reserves the right to amend, add, or strike affirmative defense as discovery ensues, or due to any inadvertence. James He further reserves the right to raise additional affirmative defenses and/or submit such at trial, which are subsequently discovered through the discovery process. James He denies any allegations of the Complaint not specifically admitted herein.

Introduction

1
2 1. HE admits the SAC purports to state claims for misappropriation of trade secrets, but
3 denies that the SAC states any valid claims against HE. HE denies any remaining allegations of
4 Paragraph 1.

5 2. HE admits Cisco designs, builds, and sells collaboration platforms. HE lacks
6 knowledge or information sufficient to admit or deny that Cisco takes reasonable measures to keep
7 information secret and accordingly all remaining allegations of Paragraph 2.

8 3. HE lacks knowledge or information sufficient to admit or deny the allegations of
9 Paragraph 3 and accordingly denies the allegations.

10 4. HE denies the allegations of Paragraph 4.

11 5. HE admit that he was employed by Plantronics, Inc. ("Poly") for a short period of
12 time. HE denies all remaining allegations of Paragraph 5.

13 6. HE lacks knowledge or information sufficient to admit or deny the allegations of
14 Paragraph 6 and accordingly denies the allegations.

15 7. HE lacks knowledge or information sufficient to admit or deny the allegations of
16 Paragraph 7 and accordingly denies the allegations.

17 8. HE denies the allegations of Paragraph 8.

18 9. HE denies the allegations of Paragraph 9.

19 10. HE lacks knowledge or information sufficient to admit or deny the allegations of
20 Paragraph 10 and accordingly denies the allegations.

21 11. HE lacks knowledge or information sufficient to admit or deny the allegations of
22 Paragraph 11 and accordingly denies the allegations.

23 12. HE lacks knowledge or information sufficient to admit or deny the allegations of
24 Paragraph 12 and accordingly denies the allegations.

25 13. HE lacks knowledge or information sufficient to admit or deny the allegations of
26 Paragraph 13 and accordingly denies the allegations.

27 14. HE lacks knowledge or information sufficient to admit or deny the allegations of
28 Paragraph 14 and accordingly denies the allegations.

15. HE admits the allegations of Paragraph 14.

16. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 16 and accordingly denies the allegations.

17. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 17 and accordingly denies the allegations.

Nature of the Action

18. HE admits the SAC purports to state claims for violations of the Defend Trade Secrets Act (“DTSA”), under 18 U.S.C. § 1836 et seq. and Cal. Civ. Code § 3426 et seq., but denies that the SAC states any valid claims against James He.

Jurisdiction and Venue

19. The allegations of Paragraph 19 sets forth a legal conclusion for which no response is required. To the extent that a response is required, HE denies the allegations.

20. The allegations of Paragraph 20 sets forth a legal conclusion for which no response is required. To the extent that a response is required, HE denies the allegations.

21. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 21 and accordingly denies the allegations.

22. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 22 and accordingly denies the allegations.

23. James He admits the allegations of Paragraph 23.

24. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 24 and accordingly denies the allegations.

25. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 25 and accordingly denies the allegations.

26. The allegations of Paragraph 26 sets forth a legal conclusion for which no response is required. To the extent that a response is required, HE denies the allegations.

Factual Allegations

A. Dr. Chung

27. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 27 and accordingly denies the allegations.

28. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 28 and accordingly denies the allegations.

29. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 29 and accordingly denies the allegations.

30. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 30 and accordingly denies the allegations.

31. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 31 and accordingly denies the allegations.

32. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 32 and accordingly denies the allegations.

33. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 32 and accordingly denies the allegations.

34. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 34 and accordingly denies the allegations.

35. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 35 and accordingly denies the allegations.

36. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 36 and accordingly denies the allegations.

37. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 37 and accordingly denies the allegations.

38. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 38 and accordingly denies the allegations.

39. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 39 and accordingly denies the allegations.

40. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 40 and accordingly denies the allegations.

1 41. HE lacks knowledge or information sufficient to admit or deny the allegations of
2 Paragraph 41 and accordingly denies the allegations.

3 42. HE lacks knowledge or information sufficient to admit or deny the allegations of
4 Paragraph 42 and accordingly denies the allegations.

5 43. HE lacks knowledge or information sufficient to admit or deny the allegations of
6 Paragraph 43 and accordingly denies the allegations.

7 44. HE lacks knowledge or information sufficient to admit or deny the allegations of
8 Paragraph 44 and accordingly denies the allegations.

9 45. HE lacks knowledge or information sufficient to admit or deny the allegations of
10 Paragraph 45 and accordingly denies the allegations.

11 46. HE lacks knowledge or information sufficient to admit or deny the allegations of
12 Paragraph 46 and accordingly denies the allegations.

13 47. HE lacks knowledge or information sufficient to admit or deny the allegations of
14 Paragraph 47 and accordingly denies the allegations.

15 48. HE lacks knowledge or information sufficient to admit or deny the allegations of
16 Paragraph 48 and accordingly denies the allegations.

17 49. HE lacks knowledge or information sufficient to admit or deny the allegations of
18 Paragraph 49 and accordingly denies the allegations.

19 50. HE lacks knowledge or information sufficient to admit or deny the allegations of
20 Paragraph 50 and accordingly denies the allegations.

21 51. HE lacks knowledge or information sufficient to admit or deny the allegations of
22 Paragraph 51 and accordingly denies the allegations.

23 52. HE lacks knowledge or information sufficient to admit or deny the allegations of
24 Paragraph 52 and accordingly denies the allegations.

25 53. HE lacks knowledge or information sufficient to admit or deny the allegations of
26 Paragraph 53 and accordingly denies the allegations.

27 54. HE lacks knowledge or information sufficient to admit or deny the allegations of
28 Paragraph 54 and accordingly denies the allegations.

1 55. HE lacks knowledge or information sufficient to admit or deny the allegations of
2 Paragraph 55 and accordingly denies the allegations.

3 56. HE lacks knowledge or information sufficient to admit or deny the allegations of
4 Paragraph 56 and accordingly denies the allegations.

5 57. HE lacks knowledge or information sufficient to admit or deny the allegations of
6 Paragraph 57 and accordingly denies the allegations.

7 58. HE lacks knowledge or information sufficient to admit or deny the allegations of
8 Paragraph 58 and accordingly denies the allegations.

9 59. HE lacks knowledge or information sufficient to admit or deny the allegations of
10 Paragraph 59 and accordingly denies the allegations.

11 60. HE lacks knowledge or information sufficient to admit or deny the allegations of
12 Paragraph 60 and accordingly denies the allegations.

13 61. HE lacks knowledge or information sufficient to admit or deny the allegations of
14 Paragraph 61 and accordingly denies the allegations.

15 62. HE lacks knowledge or information sufficient to admit or deny the allegations of
16 Paragraph 62 and accordingly denies the allegations.

17 63. HE lacks knowledge or information sufficient to admit or deny the allegations of
18 Paragraph 63 and accordingly denies the allegations.

19 64. HE lacks knowledge or information sufficient to admit or deny the allegations of
20 Paragraph 64 and accordingly denies the allegations.

21 65. HE lacks knowledge or information sufficient to admit or deny the allegations of
22 Paragraph 65 and accordingly denies the allegations.

23 66. HE lacks knowledge or information sufficient to admit or deny the allegations of
24 Paragraph 66 and accordingly denies the allegations.

25 67. HE lacks knowledge or information sufficient to admit or deny the allegations of
26 Paragraph 67 and accordingly denies the allegations.

27 68. HE lacks knowledge or information sufficient to admit or deny the allegations of
28 Paragraph 68 and accordingly denies the allegations.

69. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 69 and accordingly denies the allegations.

70. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 70 and accordingly denies the allegations.

71. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 71 and accordingly denies the allegations.

72. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 72 and accordingly denies the allegations.

73. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 73 and accordingly denies the allegations.

74. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 74 and accordingly denies the allegations.

75. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 75 and accordingly denies the allegations.

76. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 76 and accordingly denies the allegations.

77. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 77 and accordingly denies the allegations.

78. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 78 and accordingly denies the allegations.

79. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 79 and accordingly denies the allegations.

80. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 80 and accordingly denies the allegations.

81. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 81 and accordingly denies the allegations.

82. HE denies the allegations of Paragraph 82.

83. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 83 and accordingly denies the allegations.

84. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 84 and accordingly denies the allegations.

85. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 85 and accordingly denies the allegations.

86. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 86 and accordingly denies the allegations.

87. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 87 and accordingly denies the allegations.

88. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 88 and accordingly denies the allegations.

89. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 89 and accordingly denies the allegations.

90. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 90 and accordingly denies the allegations.

91. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 91 and accordingly denies the allegations.

92. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 92 and accordingly denies the allegations.

93. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 93 and accordingly denies the allegations.

94. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 94 and accordingly denies the allegations.

95. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 95 and accordingly denies the allegations.

96. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 96 and accordingly denies the allegations.

1 97. HE lacks knowledge or information sufficient to admit or deny the allegations of
2 Paragraph 97 and accordingly denies the allegations.

3 98. HE lacks knowledge or information sufficient to admit or deny the allegations of
4 Paragraph 98 and accordingly denies the allegations.

5 99. HE lacks knowledge or information sufficient to admit or deny the allegations of
6 Paragraph 99 and accordingly denies the allegations.

7 100. HE lacks knowledge or information sufficient to admit or deny the allegations of
8 Paragraph 100 and accordingly denies the allegations.

9 101. HE lacks knowledge or information sufficient to admit or deny the allegations of
10 Paragraph 101 and accordingly denies the allegations.

11 102. HE lacks knowledge or information sufficient to admit or deny the allegations of
12 Paragraph 102 and accordingly denies the allegations.

13 **B. Mr. He**

14 103. HE admits that he worked for Cisco for many years and played a role in developing
15 successful products. HE admits that he had access to Cisco source code during his period of
16 employment but denies that he actually accessed any Cisco source code from the source code server
17 for several years before he left Cisco. HE denies any remaining allegations of Paragraph 103

18 104. HE denies the allegations of Paragraph 104.

19 105. HE denies the allegations of Paragraph 105.

20 106. HE denies the allegations of Paragraph 106.

21 107. HE admits that he occasionally took photographs in the course and scope of his
22 employment at Cisco, but denies the inference that these photographs were taken or used for
23 improper, unlawful, or illegal purposes. HE denies any remaining allegations of Paragraph 107.

24 108. HE admits that he occasionally took photographs in the course and scope of his
25 employment at Cisco, but denies the inference that these photographs were taken or used for
26 improper, unlawful, or illegal purposes. HE denies any remaining allegations of Paragraph 108.

1 109. HE admits that he copied certain documents related to headset concepts in the ordinary
2 course and scope of his Cisco employment as engineering lead. HE denies any remaining allegations
3 of Paragraph 109.

4 110. HE admits that the trip taken around June 1, 2019 was personal in nature, and that he
5 continued to work remotely during this time. HE denies any remaining allegations of Paragraph 110.

6 111. HE admits that he reviewed certain photographs of headsets in order to work remotely,
7 as part of ordinary course and scope of his Cisco employment. HE denies any remaining allegations
8 of Paragraph 111.

9 112. HE admits that he reviewed certain photographs of headsets in order to work remotely,
10 as part of ordinary course and scope of his Cisco employment. HE denies any remaining allegations
11 of Paragraph 112.

12 113. HE denies the allegations of Paragraph 113.

13 114. HE admits that he connected to the network while he was still employed by Cisco as
14 part of ordinary course and scope of his Cisco employment. HE denies any remaining allegations of
15 Paragraph 114.

16 115. HE admits that he copied certain documents related to headset concepts in the ordinary
17 course and scope of his Cisco employment as engineering lead. HE denies any remaining allegations
18 of Paragraph 109.

19 116. HE admits that he discussed his resignation with his manager on or about June 10,
20 2019, and that he had not decided at such point to join Poly. HE denies any remaining allegations of
21 Paragraph 116.

22 117. HE lacks knowledge or information sufficient to admit or deny the allegations of
23 Paragraph 117 and accordingly denies the allegations.

24 118. HE admits that he copied certain documents in the ordinary course and scope of his
25 Cisco employment particularly to facilitate remote work. HE denies any remaining allegations of
26 Paragraph 118.

1 119. HE admits that he copied certain documents in the ordinary course and scope of his
2 Cisco employment particularly to facilitate remote work. HE denies any remaining allegations of
3 Paragraph 119.

4 120. HE admits that he copied certain documents in the ordinary course and scope of his
5 Cisco employment particularly to facilitate remote work. HE denies any remaining allegations of
6 Paragraph 120.

7 121. HE admits the allegations of Paragraph 121.

8 122. HE denies the allegations of Paragraph 122.

9 123. HE admits the allegations of Paragraph 123.

10 124. HE lacks knowledge or information sufficient to admit or deny the allegations of
11 Paragraph 124 and accordingly denies the allegations.

12 125. HE lacks knowledge or information sufficient to admit or deny the allegations of
13 Paragraph 125 and accordingly denies the allegations.

14 126. HE lacks knowledge or information sufficient to admit or deny the allegations of
15 Paragraph 126 and accordingly denies the allegations.

16 127. HE denies the allegations of Paragraph 127.

17 128. HE admits that he received a notice from a Cisco lawyer on August 2, 2019. HE
18 denies any remaining allegations of Paragraph 128.

19 129. HE denies the allegations of Paragraph 129.

20 130. HE admits that Poly terminated his employment. HE lacks knowledge or information
21 sufficient to admit or deny the remaining allegations of Paragraph 130 and accordingly denies the
22 allegations.

23 131. HE lacks knowledge or information sufficient to admit or deny the allegations of
24 Paragraph 131 and accordingly denies the allegations.

25 132. HE admits that the Proprietary Information and Inventions Agreement was entered and
26 denies any remaining allegations of Paragraph 132.

27 133. HE denies the allegations of Paragraph 133.
28

1 134. HE lacks knowledge or information sufficient to admit or deny the allegations of
2 Paragraph 134 and accordingly denies the allegations.

3 135. HE lacks knowledge or information sufficient to admit or deny the allegations of
4 Paragraph 135 and accordingly denies the allegations.

5 136. HE denies the allegations of Paragraph 136.

6 137. HE lacks knowledge or information sufficient to admit or deny the allegations of
7 Paragraph 137 and accordingly denies the allegations.

8 **C. Messrs. Williams & Puorro**

9 138. HE knowledge or information sufficient to admit or deny the allegations of Paragraph
10 138 and accordingly denies the allegations.

11 139. HE lacks knowledge or information sufficient to admit or deny the allegations of
12 Paragraph 139 and accordingly denies the allegations.

13 140. HE lacks knowledge or information sufficient to admit or deny the allegations of
14 Paragraph 140 and accordingly denies the allegations.

15 141. HE lacks knowledge or information sufficient to admit or deny the allegations of
16 Paragraph 141 and accordingly denies the allegations.

17 142. HE lacks knowledge or information sufficient to admit or deny the allegations of
18 Paragraph 142 and accordingly denies the allegations.

19 143. HE lacks knowledge or information sufficient to admit or deny the allegations of
20 Paragraph 143 and accordingly denies the allegations.

21 144. HE lacks knowledge or information sufficient to admit or deny the allegations of
22 Paragraph 144 and accordingly denies the allegations.

23 145. HE lacks knowledge or information sufficient to admit or deny the allegations of
24 Paragraph 145 and accordingly denies the allegations.

25 146. HE lacks knowledge or information sufficient to admit or deny the allegations of
26 Paragraph 146 and accordingly denies the allegations.

27 147. HE lacks knowledge or information sufficient to admit or deny the allegations of
28 Paragraph 147 and accordingly denies the allegations.

1 148. HE lacks knowledge or information sufficient to admit or deny the allegations of
2 Paragraph 148 and accordingly denies the allegations.

3 149. HE lacks knowledge or information sufficient to admit or deny the allegations of
4 Paragraph 149 and accordingly denies the allegations.

5 150. HE lacks knowledge or information sufficient to admit or deny the allegations of
6 Paragraph 150 and accordingly denies the allegations.

7 151. HE He lacks knowledge or information sufficient to admit or deny the allegations of
8 Paragraph 151 and accordingly denies the allegations.

9 152. HE lacks knowledge or information sufficient to admit or deny the allegations of
10 Paragraph 152 and accordingly denies the allegations.

11 153. HE lacks knowledge or information sufficient to admit or deny the allegations of
12 Paragraph 153 and accordingly denies the allegations.

13 154. HE lacks knowledge or information sufficient to admit or deny the allegations of
14 Paragraph 154 and accordingly denies the allegations.

15 155. HE lacks knowledge or information sufficient to admit or deny the allegations of
16 Paragraph 155 and accordingly denies the allegations.

17 156. HE lacks knowledge or information sufficient to admit or deny the allegations of
18 Paragraph 156 and accordingly denies the allegations.

19 157. HE lacks knowledge or information sufficient to admit or deny the allegations of
20 Paragraph 157 and accordingly denies the allegations.

21 158. HE lacks knowledge or information sufficient to admit or deny the allegations of
22 Paragraph 158 and accordingly denies the allegations.

23 159. HE lacks knowledge or information sufficient to admit or deny the allegations of
24 Paragraph 159 and accordingly denies the allegations.

25 160. HE lacks knowledge or information sufficient to admit or deny the allegations of
26 Paragraph 160 and accordingly denies the allegations.

27 161. HE lacks knowledge or information sufficient to admit or deny the allegations of
28 Paragraph 161 and accordingly denies the allegations.

1 162. HE lacks knowledge or information sufficient to admit or deny the allegations of
2 Paragraph 162 and accordingly denies the allegations.

3 163. HE lacks knowledge or information sufficient to admit or deny the allegations of
4 Paragraph 163 and accordingly denies the allegations.

5 164. HE lacks knowledge or information sufficient to admit or deny the allegations of
6 Paragraph 164 and accordingly denies the allegations.

7 165. HE lacks knowledge or information sufficient to admit or deny the allegations of
8 Paragraph 165 and accordingly denies the allegations.

9 166. HE lacks knowledge or information sufficient to admit or deny the allegations of
10 Paragraph 166 and accordingly denies the allegations.

11 167. HE lacks knowledge or information sufficient to admit or deny the allegations of
12 Paragraph 167 and accordingly denies the allegations.

13 168. HE lacks knowledge or information sufficient to admit or deny the allegations of
14 Paragraph 168 and accordingly denies the allegations.

15 169. HE lacks knowledge or information sufficient to admit or deny the allegations of
16 Paragraph 169 and accordingly denies the allegations.

17 170. HE lacks knowledge or information sufficient to admit or deny the allegations of
18 Paragraph 170 and accordingly denies the allegations.

19 171. HE lacks knowledge or information sufficient to admit or deny the allegations of
20 Paragraph 171 and accordingly denies the allegations.

21 172. HE lacks knowledge or information sufficient to admit or deny the allegations of
22 Paragraph 172 and accordingly denies the allegations.

23 173. HE lacks knowledge or information sufficient to admit or deny the allegations of
24 Paragraph 173 and accordingly denies the allegations.

25 174. HE lacks knowledge or information sufficient to admit or deny the allegations of
26 Paragraph 174 and accordingly denies the allegations.

27 175. HE lacks knowledge or information sufficient to admit or deny the allegations of
28 Paragraph 175 and accordingly denies the allegations.

1 176. HE lacks knowledge or information sufficient to admit or deny the allegations of
2 Paragraph 176 and accordingly denies the allegations.

3 177. HE lacks knowledge or information sufficient to admit or deny the allegations of
4 Paragraph 177 and accordingly denies the allegations.

5 178. HE lacks knowledge or information sufficient to admit or deny the allegations of
6 Paragraph 178 and accordingly denies the allegations.

7 179. HE lacks knowledge or information sufficient to admit or deny the allegations of
8 Paragraph 179 and accordingly denies the allegations.

9 180. HE lacks knowledge or information sufficient to admit or deny the allegations of
10 Paragraph 180 and accordingly denies the allegations.

11 181. HE lacks knowledge or information sufficient to admit or deny the allegations of
12 Paragraph 181 and accordingly denies the allegations.

13 182. HE lacks knowledge or information sufficient to admit or deny the allegations of
14 Paragraph 182 and accordingly denies the allegations.

15 183. HE lacks knowledge or information sufficient to admit or deny the allegations of
16 Paragraph 183 and accordingly denies the allegations.

17 184. HE lacks knowledge or information sufficient to admit or deny the allegations of
18 Paragraph 184 and accordingly denies the allegations.

19 185. HE lacks knowledge or information sufficient to admit or deny the allegations of
20 Paragraph 185 and accordingly denies the allegations.

21 186. HE lacks knowledge or information sufficient to admit or deny the allegations of
22 Paragraph 186 and accordingly denies the allegations.

23 187. HE lacks knowledge or information sufficient to admit or deny the allegations of
24 Paragraph 187 and accordingly denies the allegations.

25 188. HE lacks knowledge or information sufficient to admit or deny the allegations of
26 Paragraph 188 and accordingly denies the allegations.

27 189. HE lacks knowledge or information sufficient to admit or deny the allegations of
28 Paragraph 189 and accordingly denies the allegations.

190. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 190 and accordingly denies the allegations.

191. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 191 and accordingly denies the allegations.

192. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 192 and accordingly denies the allegations.

193. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 193 and accordingly denies the allegations.

194. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 194 and accordingly denies the allegations.

195. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 195 and accordingly denies the allegations.

196. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 196 and accordingly denies the allegations.

197. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 197 and accordingly denies the allegations.

198. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 198 and accordingly denies the allegations.

199. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 199 and accordingly denies the allegations.

200. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 200 and accordingly denies the allegations.

201. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 201 and accordingly denies the allegations.

202. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 202 and accordingly denies the allegations.

D. Poly

203. Paragraph 203 contains no allegations of substance or fact. To the extent any response is required, HE denies the allegations of Paragraph 203.

204. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 204 and accordingly denies the allegations.

205. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 205 and accordingly denies the allegations.

206. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 206 and accordingly denies the allegations.

207. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 207 and accordingly denies the allegations.

208. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 208 and accordingly denies the allegations.

209. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 209 and accordingly denies the allegations.

210. HE denies the allegations of Paragraph 210.

211. HE lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 211 and accordingly denies the allegations.

Count I

212. Paragraph 212 contains no allegations of substance or fact. James He reasserts his response to each of the incorporated preceding paragraphs.

213. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 213 and accordingly denies the allegations.

214. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 214 and accordingly denies the allegations.

215. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 215 and accordingly denies the allegations.

216. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 216 and accordingly denies the allegations.

1 217. James He lacks knowledge or information sufficient to admit or deny the allegations
2 of Paragraph 217 and accordingly denies the allegations.

3 218. James He lacks knowledge or information sufficient to admit or deny the allegations
4 of Paragraph 218 and accordingly denies the allegations.

5 219. James He lacks knowledge or information sufficient to admit or deny the allegations
6 of Paragraph 219 and accordingly denies the allegations.

7 220. James He lacks knowledge or information sufficient to admit or deny the allegations
8 of Paragraph 220 and accordingly denies the allegations.

9 221. James He lacks knowledge or information sufficient to admit or deny the allegations
10 of Paragraph 221 and accordingly denies the allegations.

11 222. James He lacks knowledge or information sufficient to admit or deny the allegations
12 of Paragraph 222 and accordingly denies the allegations.

13 223. James He lacks knowledge or information sufficient to admit or deny the allegations
14 of Paragraph 223 and accordingly denies the allegations.

15 224. James He lacks knowledge or information sufficient to admit or deny the allegations
16 of Paragraph 224 and accordingly denies the allegations.

17 225. James He lacks knowledge or information sufficient to admit or deny the allegations
18 of Paragraph 226 and accordingly denies the allegations.

19 226. James He lacks knowledge or information sufficient to admit or deny the allegations
20 of Paragraph 226 and accordingly denies the allegations.

21 227. James He lacks knowledge or information sufficient to admit or deny the allegations
22 of Paragraph 227 and accordingly denies the allegations.

23 228. James He lacks knowledge or information sufficient to admit or deny the allegations
24 of Paragraph 228 and accordingly denies the allegations.

25 229. James He lacks knowledge or information sufficient to admit or deny the allegations
26 of Paragraph 229 and accordingly denies the allegations.

27 230. James He lacks knowledge or information sufficient to admit or deny the allegations
28 of Paragraph 230 and accordingly denies the allegations.

231. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 231 and accordingly denies the allegations.

232. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 232 and accordingly denies the allegations.

233. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 233 and accordingly denies the allegations.

234. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 234 and accordingly denies the allegations.

235. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 235 and accordingly denies the allegations.

Count II

236. Paragraph 221 contains no allegations of substance or fact. James He reasserts his response to each of the incorporated preceding paragraphs.

237. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 237 and accordingly denies the allegations.

238. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 238 and accordingly denies the allegations.

239. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 239 and accordingly denies the allegations.

240. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 240 and accordingly denies the allegations.

241. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 241 and accordingly denies the allegations.

Count III

242. Paragraph 242 contains no allegations of substance or fact. James He reasserts his response to each of the incorporated preceding paragraphs.

243. James He denies the allegations of Paragraph 243.

244. James He denies the allegations of Paragraph 244.

245. James He denies the allegations of Paragraph 245.

246. James He denies the allegations of Paragraph 246.

247. James He denies the allegations of Paragraph 247.

248. James He denies the allegations of Paragraph 248.

249. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 249 and accordingly denies the allegations.

250. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 250 and accordingly denies the allegations.

251. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 251 and accordingly denies the allegations.

252. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 252 and accordingly denies the allegations.

253. James He admits the PIIA was entered into. James He denies any remaining allegations of Paragraph 253.

254. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 254 and accordingly denies the allegations.

255. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 255 and accordingly denies the allegations.

256. James He denies the allegations of Paragraph 256.

257. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 257 and accordingly denies the allegations.

258. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 258 and accordingly denies the allegations.

259. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 259 and accordingly denies the allegations.

260. James He denies the allegations of Paragraph 260.

261. James He admits the allegations of Paragraph 261.

262. James He denies the allegations of Paragraph 262.

263. James He denies the allegations of Paragraph 263.

Count VI

264. Paragraph 264 contains no allegations of substance or fact. James He reasserts his response to each of the incorporated preceding paragraphs.

265. James He denies the allegations of Paragraph 265.

266. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 266 and accordingly denies the allegations.

267. James He denies the allegations of Paragraph 267.

268. James He denies the allegations of Paragraph 268.

269. James He denies the allegations of Paragraph 269.

270. James He denies the allegations of Paragraph 270.

Count V

271. Paragraph 271 contains no allegations of substance or fact. James He reasserts his response to each of the incorporated preceding paragraphs.

272. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 272 and accordingly denies the allegations.

273. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 273 and accordingly denies the allegations.

274. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 274 and accordingly denies the allegations.

275. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 275 and accordingly denies the allegations.

276. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 276 and accordingly denies the allegations.

277. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 277 and accordingly denies the allegations.

278. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 278 and accordingly denies the allegations.

279. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 279 and accordingly denies the allegations.

280. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 280 and accordingly denies the allegations.

281. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 281 and accordingly denies the allegations.

282. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 282 and accordingly denies the allegations.

283. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 283 and accordingly denies the allegations.

284. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 284 and accordingly denies the allegations.

285. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 285 and accordingly denies the allegations.

286. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 286 and accordingly denies the allegations.

287. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 287 and accordingly denies the allegations.

288. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 288 and accordingly denies the allegations.

289. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 289 and accordingly denies the allegations.

290. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 290 and accordingly denies the allegations.

Count VI

291. Paragraph 291 contains no allegations of substance or fact. James He reasserts his response to each of the incorporated preceding paragraphs.

292. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 292 and accordingly denies the allegations.

293. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 293 and accordingly denies the allegations.

294. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 294 and accordingly denies the allegations.

295. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 295 and accordingly denies the allegations.

296. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 296 and accordingly denies the allegations.

297. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 297 and accordingly denies the allegations.

Count VII

298. Paragraph 298 contains no allegations of substance or fact. James He reasserts his response to each of the incorporated preceding paragraphs.

299. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 299 and accordingly denies the allegations.

300. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 300 and accordingly denies the allegations.

301. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 301 and accordingly denies the allegations.

302. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 302 and accordingly denies the allegations.

303. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 303 and accordingly denies the allegations.

304. James He lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 304 and accordingly denies the allegations.

1 331. James He denies the allegation that he used Cisco materials while employed at Poly.
2 James He lacks knowledge or information sufficient to admit or deny the remaining allegations of
3 Paragraph 331 and accordingly denies the allegations.

4 332. James He lacks knowledge or information sufficient to admit or deny the allegations
5 of Paragraph 332 and accordingly denies the allegations.

6 333. James He lacks knowledge or information sufficient to admit or deny the allegations
7 of Paragraph 333 and accordingly denies the allegations.

8 334. James He denies that Dr. Chung recruited him to join Poly. James He further denies
9 that he misappropriated trade secrets by improper means. James He lacks knowledge or information
10 sufficient to admit or deny the remaining allegations of Paragraph 334 and accordingly denies the
11 allegations.

12 335. James He lacks knowledge or information sufficient to admit or deny the allegations
13 of Paragraph 335 and accordingly denies the allegations.

14 336. James He lacks knowledge or information sufficient to admit or deny the allegations
15 of Paragraph 336 and accordingly denies the allegations.

16 337. James He lacks knowledge or information sufficient to admit or deny the allegations
17 of Paragraph 337 and accordingly denies the allegations.

18 338. James He lacks knowledge or information sufficient to admit or deny the allegations
19 of Paragraph 338 and accordingly denies the allegations.

20 339. James He lacks knowledge or information sufficient to admit or deny the allegations
21 of Paragraph 339 and accordingly denies the allegations.

22 340. James He lacks knowledge or information sufficient to admit or deny the allegations
23 of Paragraph 340 and accordingly denies the allegations.

24 341. James He lacks knowledge or information sufficient to admit or deny the allegations
25 of Paragraph 341 and accordingly denies the allegations.

26 342. James He lacks knowledge or information sufficient to admit or deny the allegations
27 of Paragraph 342 and accordingly denies the allegations.
28

1 The claims made in the Complaint, and any recovery thereunder, are barred by the doctrine of
2 unclean hands.

3 **FIFTH AFFIRMATIVE DEFENSE**

4 Plaintiffs' claims and recovery thereunder are barred and/or limited because Plaintiffs failed
5 to mitigate the damages which they allegedly suffered, if any.

6 **SIXTH AFFIRMATIVE DEFENSE**

7 Plaintiffs' claims and recovery thereunder are barred as it has suffered no damages from
8 James He's conduct, and James He has at all times acted in good faith, without malice, and with due
9 regard of the alleged rights of Plaintiffs.

10 Defendant reserves all affirmative defenses available under Rule 8(c) of the Federal Rules of
11 Civil Procedure, and any other defenses, at law or in equity, that may be available now or in the
12 future based on discovery or any other factual investigation.

14 Dated: August 19, 2020

By: /s/ Kevin Viau

Otto O. Lee, Esq.

Kevin Viau, Esq.

Jenny Hong-Gonzalez, Esq.

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COUNTERCLAIMS

Defendant and Counter-Plaintiff James He, by and through his counsel Intellectual Property Law Group LLP, based upon personal knowledge as to his own acts, and on information and belief as to all others based on his own and his attorneys' investigation, alleges these counterclaims against Cisco, as follows:

Introduction

1. Defendant and Counter-Plaintiff James He ("Mr. He") counterclaims against Plaintiff and Counter-Defendant Cisco Systems, Inc., a California Corporation, and Cisco Technology, Inc., a California Corporation (collectively "Cisco"), on the grounds that Cisco has been engaged in an escalating retaliatory campaign against Mr. He's decision to leave Cisco to work for its competitor Plantronics, Inc. ("Poly"). This was all done under the auspices of a de facto non-compete agreement.

2. The broad claims against Mr. He are based on Cisco's insistence that Mr. He took information covered by a Proprietary Information and Inventions Agreement ("PIIA") that in reality functions more as an improper de facto non-compete agreement. Indeed, the PIIA is so expansive that it covers normal, unprotectable ideas and information that are not normally thought of as confidential and that any individual leaving a company knows. The PIIA was so expansive that it allowed Cisco to sue Mr. He for leaving Cisco with information or ideas that are not protectable under any laws.

3. By using a de facto non-compete agreement, Mr. He has been and continues to be damaged by Cisco's conduct. Mr. He brings these counterclaims to seek relief from Cisco's retaliatory campaign, and requires a declaration from the Court declaring the provisions of the PIIA unenforceable and injunctive relief from the Court enjoining Cisco from enforcing such provisions.

Jurisdiction and Venue

4. Mr. He asserts these counterclaims under Rule 13 of the Federal Rules of Civil Procedure. Cisco has its principal place of business in this District and has further consented to jurisdiction and venue by filing suit against Mr. He in this Court. Accordingly, Cisco is subject to personal jurisdiction in this district.

5. This Court has supplemental subject matter jurisdiction over these state law counterclaims pursuant to 28 U.S.C. § 1367 because they arise out of the same occurrence that is the basis for Cisco's Defend Trade Secrets Act ("DTSA") claims and form part of the same case or controversy.

6. Venue is proper within this District under 25 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to these counterclaims occurred within this District.

The Parties

7. Mr. He was, for a short period of time, an engineering director at Poly. Mr. He was employed at Cisco for nearly twenty years as an engineer and engineering manager. Upon his resignation from Cisco in June 2019, Mr. He began working at Poly.

8. Cisco is a California corporation with its principal place of business located at 170 West Tasman Drive San Jose, California 95234.

General Allegations

9. At the core of Cisco's Second Amended Complaint is the PIIA Mr. He was forced to sign when he first began working at Cisco as a condition of his employment. Mr. He received no other form of consideration for agreeing to sign the PIIA. Notwithstanding Cisco's belief that Mr. He had breached the PIIA, Cisco's true intent behind forcing employees like Mr. He to sign the PIIA is revealed by Cisco's reliance on it when bringing its misappropriation of trade secrets claims.

10. The stand-alone PIIA and the broad provisions within it serves as a de facto non-compete agreement. The PIIA deters employees like Mr. He from beginning employment for one of Cisco's competitors out of fear that they will face allegations of misappropriating documents or information included under the broad blanket cover set forth in the PIIA.

11. Mr. He's PIIA broadly defines "Proprietary Information" to include without limitation:

[S]oftware programs and subroutines, source and object code, algorithms, trade secrets, designs, technology, know-how, processes, data, ideas, techniques, inventions (whether patentable or not), works of authorship, formulas, business and product development plans, customer lists, terms of compensation and performance levels of Company employees, and other information concerning the Company's actual or anticipated business, research or development, or which is received in confidence by or for the Company from any other person.

12. Having set out the above incredibly broad, virtually limitless definition of Proprietary Information, the PIIA includes the following related prohibitory provision:

[At] all times, both during my employment by the Company and after its termination, I will keep in confidence and trust and will not use or disclose any Proprietary Information or anything relating to it without the prior written consent of an officer of the Company, except as may be necessary in the ordinary course of performing my duties to the Company.

The PIIA thus effectively precludes Mr. He from using his own know how or ideas after leaving Cisco unless an officer at Cisco permits him to do so in writing. Mr. He is further not allowed to share the terms of his compensation at Cisco without the written permission of a Cisco officer.

13. The PIIA also includes this provision:

I understand that the Company possesses or will possess "Company Documents and Materials" which are important to its business. For purposes of this Agreement, "Company Documents and Materials" are documents or other media or tangible items that contain or embody Proprietary Information or any other information concerning the business, operations or plans of the Company, whether such documents, media or items have been prepared by me or by others. "Company Documents and Materials" include, but are not limited to, blueprints, drawings, photographs, charts, graphs, notebooks, customer lists, computer disks, tapes or printouts, sound recordings and other printed, typewritten or handwritten documents, sample products, prototypes and models.

14. Classifying "know how," an employee's "ideas," and **any** information concerning Cisco's "actual or anticipated business" as proprietary information is a tool meant to make it difficult for employees to know what information falls under the protection of the PIIA and thus make it easier for Cisco to accuse ex-employees, like Mr. He, of misappropriating information that may not be confidential or even trade secrets, but still covered by the PIIA. This is only compounded by additional provisions in the PIIA that make "all proprietary information ... and all rights including, without limitation, intellectual property rights anywhere in the world in connection therewith," the sole property of Cisco.

15. The definition of "Company Documents and Materials," only adds to the confusion as employees are unsure if things such as "notebooks" containing their own "ideas" or other personal work can be interpreted to be information concerning Cisco's business. Indeed, the provision simply encompasses all information of whatever nature, irrespective of whether the information is public, readily ascertainable, or otherwise assembled or capable of assembly independently.

1 16. The PIIA is Cisco's attempt to gain ownership over its employee's personal ideas and
2 personal work solutions. Cisco is preventing employees from directly or indirectly benefitting from
3 their work by using their own personal ideas and solutions to attain better employment opportunities.
4 The PIIA effectively prevents employees from using any of their experience at Cisco as a platform to
5 work for a competitor and discourages Cisco's competitors from hiring employees, because those
6 employees are less valuable if they are (1) embroiled in costly and time-consuming litigation, and (2)
7 prevented from using their years of experience in their new employment.

8 17. This is precisely the strategy that Cisco is attempting to employ against Mr. He. Cisco
9 enforced its de facto non-compete agreement against Mr. He by filing misappropriation of trade
10 secrets claims and claiming as "trade secrets" any of the amorphous information that fits within its
11 expansive definition of "Proprietary Information" or Cisco-related information knowing that much of
12 the information at issue is not protectable as a trade secret or even as competitively sensitive
13 information. Cisco is now attempting to enforce its de facto non-compete agreement under the guise
14 of allegations that Mr. He breached the provisions within the PIIA. Cisco asserts that Mr. He has
15 breached the PIIA by allegedly uploading Cisco Confidential Materials onto external storage drives
16 and then later accessing the materials while employed by Poly.

17 18. On information and belief, Cisco insisted that Mr. He agree to the provisions of the
18 PIIA so that it could then use the PIIA to attempt to prevent Mr. He from obtaining employment with
19 a competitor and, failing that, to attempt to get any such competitor to separate Mr. He from his
20 employment. Cisco has already succeeded in its purpose as Mr. He was fired from his employment at
21 Poly after Cisco raised its allegations of misappropriation and breach under the PIIA which are the
22 subject of this action. Mr. He has thus suffered significant monetary and irreparable harm.

23 19. Cisco further claims Mr. He breached the PIIA by copying and archiving emails from
24 his Cisco email account which allegedly contained proprietary information. On information and
25 belief, Cisco's allegations are nothing more than a thinly-veiled retaliatory endeavor meant to punish
26 Mr. He for his decision to leave the company. Using the PIIA as a de facto non-compete agreement
27 is Cisco's vehicle to move its endeavor against Mr. He forward and it violates California's strong
28 public policy in favor of employee mobility, as statutorily codified in California Business and

1 Professions Code § 16600. Therefore, it is unenforceable and void. Cisco requiring its employees to
 2 enter into such agreement is an unlawful and unfair business practice within the meaning of
 3 California Business and Professions Code § 17200, *et seq.*

4 **FIRST CAUSE OF ACTION**

5 **(Declaratory Relief)**

6 20. Mr. He incorporates all the paragraphs above as though fully set forth herein.

7 21. An actual controversy has arisen regarding the validity of Cisco's Proprietary
 8 Information and Inventions Agreement.

9 22. Specifically, Cisco has stated that its misappropriation of trade secrets claims against
 10 Mr. He are based on allegations that "each of the trade secrets Mr. He misappropriated constitutes
 11 Proprietary Information under Mr. He's PIIA" and that he breached the agreement because "pursuant
 12 to his PIIA, Mr. He was prohibited from removing Proprietary Information from the business
 13 premises of Cisco or delivering it to any person or entity outside of Cisco, except as required in
 14 connection with performing the duties of his employment." Mr. He rightly believes that he is entitled
 15 to his "ideas" and "know how" and that he is, therefore, free to use his ideas and know how without
 16 the open threat from Cisco that it will sue him for breach of the PIIA. Mr. He further requires a
 17 declaration that he is entitled to share his compensation information despite the fact that the PIIA, on
 18 its face, prohibits him from doing so.

19 23. The PIIA functions as a de-facto non-compete agreement that improperly restricts
 20 Cisco employees' mobility, and is thus void as against public policy and unenforceable pursuant to
 21 Cal. Bus. & Prof. Code § 16600.

22 24. Declaratory relief is necessary and proper so that Mr. He can resolve his rights and
 23 duties relating to Cisco's PIIA.

24 **SECOND CAUSE OF ACTION**

25 **(Violation of Cal. Bus. & Prof. Code § 17200 *et seq.*)**

26 25. Mr. He incorporates all the paragraphs above as though fully set forth herein.
 27
 28

1 26. Cisco's use of its PIIA as a de facto non-compete agreement that is unlawful under
2 California Business & Professions Code § 16600 constitutes unfair competition in violation of the
3 Unfair Competition Law, specifically California Business & Professions Code § 17200 *et seq.*

4 27. Cisco's unfair competition has injured and will continue to injure employees, like Mr.
5 He, who have a desire to leave Cisco and begin working for one of Cisco's competitors or in the field
6 in which Cisco competes.

7 28. Upon information and belief, even though the non-compete provisions in the PIIA are
8 unenforceable, Cisco has utilized them, and continues to utilize them, in an attempt to restrict Mr.
9 He's mobility as an employee, and has so succeeded as Mr. He has already been fired from his
10 position at Poly, thus suffering significant harm. On information and belief, Cisco maintains similar
11 non-competition provisions as a scheme and device to restrain the employment opportunities of its
12 employees within the State of California. Cisco also utilizes the non-competition provisions to
13 prevent competing companies or employers from hiring Cisco's former employees to work in the
14 State of California, and from lawfully soliciting and transacting business in competition with Cisco
15 within the State of California, thereby obtaining an unfair competitive advantage and economic
16 profits and other benefits to Cisco at the expense of Mr. He and Cisco's employees, former
17 employees, and other competing companies or employers such as Poly and the People of California.

18 29. By forcing Mr. He to defend against enforcement of an illegal, void, and
19 unenforceable de facto non-compete agreement, Cisco has caused Mr. He to incur attorneys' fees,
20 litigation costs, and economic damage in an amount to be proven during this matter.

21 30. By reason of Cisco's violations of California Business and Professions Code § 17200
22 *et seq.*, Mr. He has been injured in his employment and property including through the expenditure of
23 attorneys' fees and litigation costs.

24 31. Unless enjoined by this Court, Cisco will continue to engage in the foregoing unfair
25 business practices. Mr. He thus requests an order enjoining Cisco from engaging in the unfair
26 business practices described herein.

27 32. Mr. He has suffered irreparable injury as a result of Cisco's actions and business
28 practices, and the conduct alleged above will continue to cause harm to Mr. He until Cisco is

enjoined from such acts and practices. Mr. He is entitled to relief, including an injunction and such economic and other relief as may be proved during this matter.

PRAYER FOR RELIEF

WHEREFORE, Mr. He respectfully requests that this Court enter judgment against Cisco as follows:

A declaration that Cisco's Proprietary Information and Inventions Agreement is unenforceable and void as against public policy;

An injunction enjoining Cisco from enforcing the de-facto non-compete agreement in violation of California law;

An award of any and all damages recoverable under law including but not limited to compensatory damages, enhanced damages, incidental damages, and consequential damages;

Pre- and post-judgment interest;

Attorneys' fees, costs, and expenses in this action; and

An award of such and further relief as the Court deems just and proper

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Mr. He hereby demands a trial by jury of all issues so triable herein.

Dated: August 19, 2020

By: /s/ Kevin Viau

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